

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB

Mailed:
September 26, 2003
Paper No. 17
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Jolie Intimates Inc.

Serial No. 76/208,434

Ezra Sutton for Jolie Intimates Inc.

Sue Carruthers, Trademark Examining Attorney, Law Office
108 (David Shallant, Managing Attorney).

Before Simms, Bucher and Drost, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Jolie Intimates Inc. seeks registration on the
Principal Register for the mark GYRL CO. for goods
identified as "intimate apparel, namely, bras, crop tops,
bikini underwear, panties, slips, nightgowns, cami sets,
and packaged underwear," in International Class 25.¹

This case is now before the Board on appeal from the
final refusal to register based upon Section 2(d) of the

¹ Application Serial No. 76/208,434 was filed on February 6, 2001 based upon applicant's allegation of a *bona fide* intention to use the mark in commerce. At the request of the Trademark Examining Attorney, applicant has disclaimed the word "girl" apart from the mark as shown.

Trademark Act, 15 U.S.C. §1052(d). The Trademark Examining Attorney has held that applicant's mark, if it is used in connection with the identified goods, so resembles the mark GIRLS CO., which is registered for "women's and girls' clothing, namely, t-shirts, blouses, sweaters, sweat shirts and tank tops," also in International Class 25,² that it would be likely to cause confusion, to cause mistake or to deceive.

Applicant and the Trademark Examining Attorney have fully briefed this appeal, but applicant did not request an oral hearing.

We affirm the refusal to register.

Applicant's primary contention is that the term "girl" "has been heavily diluted" (Applicant's appeal brief, p. 2) so that the cited registration is entitled to a most narrow scope of protection. Applicant argues that in light of the weakness of this term, even slight differences between the marks may be deemed sufficient to avoid a finding that confusion is likely.

While admitting that many clothing registrations contain the word "girl" or "girls," the Trademark Examining Attorney argues that except for the cited registration,

² Registration No. 2,435,759, issued on the Principal Register on March 13, 2001.

none of these other third-party marks follows it with the designation "Co.," as does applicant.

Our determination under Section 2(d) is based upon an analysis of all of the facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relationship of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

We turn first to the du Pont factor focusing on the relationship of the goods as described in the application and the cited registration. As to the similarities or dissimilarities of the respective goods of applicant and of registrant, applicant does not spend any time trying to rebut the showing of the Trademark Examining Attorney that applicant's intimate apparel is closely related to the women's and girls' tops listed in the cited registration. Clearly, likelihood of confusion has been found in cases where the same or similar marks were used by different parties in connection with underwear or hosiery and items of outerwear. See Jockey International, Inc. v. Mallory & Church Corp., 25 USPQ2d 1233 (TTAB 1992); In re Mercedes

Slacks, Ltd., 213 USPQ 397 (TTAB 1982); In re Cook United, Inc., 185 USPQ 444 (TTAB 1985); and Esquire Sportswear Mfg. Co. v. Genesco Inc., 141 USPQ 400 (TTAB 1964). See also General Shoe Corp. v. Hollywood-Maxwell Co., 277 F.2d 169, 125 USPQ 443 (CCPA 1960); and Cambridge Rubber Co. v. Cluett, Peabody & Co., Inc., 286 F.2d 623, 128 USPQ 549 (CCPA 1961). Accordingly, we find that these goods are closely related, and would move in the same channels of trade to the same ordinary consumers.

Turning then to the similarity or dissimilarity of the marks in their entirety as to appearance, sound and connotation, we find a strong similarity in the two marks. Despite the minimal visual differences in the marks due to the changed second letter ("y" versus "i"), the first portion of both marks is pronounced identically. The difference between the singular and plural forms of the word also creates a small dissimilarity in the marks, but not significant enough that consumers, with their fallible memories, would be expected to remember this distinction. Certainly we cannot assume that these consumers will be afforded the opportunity to make a side-by-side comparison of these two marks. Hence, as argued by the Trademark Examining Attorney, we find that when compared in their

entireties, these two marks create quite similar overall commercial impressions.

Finally, we turn to the du Pont factor focusing on the number and nature of similar marks applied to similar goods. Throughout the prosecution of this application, major portions of applicant's responses and appeal brief emphasized the number of federal trademark registrations listing items of clothing and having a form of the word "Girl" somewhere within the composite mark. Applicant attached forty-seven records (the word "Girl" was the first word in each of the marks) to its response of December 19, 2001, followed by 148 records (the word "Girl" was just somewhere within the marks) attached to its response of September 25, 2002. In addition to noting the sheer number of such registrations, applicant bases its arguments for registration herein on specific third-party registrations. For example:

... [T]he U.S. Trademark Office has granted registrations for "**GIRLS CO.**" [the cited mark] and "**G.I.R.L.**" subsequent to granting registrations [issued to the same party] for "**GIRLS INC.**" and "**GIRLS INCORPORATED.**"

(Applicant's appeal brief, p. 2).

Based on this entire record, we agree with applicant's contention that as applied to marks for girls' clothing, the word "Girl" (or "Girls") alone appears to have little

source-indicating significance. The register reflects the fact that in the context of marks for girls' clothing, consumers are accustomed to looking to slight differences in the other parts of such composite mark to distinguish among marks having the word "Girl."

On the other hand, we disagree with applicant's position when it concludes that its unusual spelling of "gyrl" is just such a difference - i.e., one that should entitle applicant's chosen mark to coexist with the other third-party marks already registered, including the cited registration. On this question, we agree with the Trademark Examining Attorney that this switch of the letter "y" for the letter "i" in "girl" is insufficient to avoid a likelihood of confusion. Even weak marks are entitled to protection against registration by a subsequent user of the same or similar mark for the same or related goods.³ Moreover, in the event that we have any doubt about this matter, such doubt must be resolved in favor of the registrant. In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

³ We specifically note that the cited registered mark is on the Principal Register and it is, of course, entitled to the statutory presumptions under Section 7(b) of the Lanham Act.

Hence, we find that consumers familiar with the registrant's mark GIRLS CO. used in connection with items of women's and girls' clothing would mistakenly believe, upon seeing the mark GYRL CO. for intimate apparel, that the goods emanate from the same source.

Decision: The refusal to register under Section 2(d) of the Act is hereby affirmed.